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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re C.M., et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

F058649

(Super. Ct. Nos. 515574, 515575)

OPINION

APPEAL from orders of the Superior Court of Stanislaus County. Nancy Barnett
Williamsen, Commissioner.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

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T.R., the mother of sons C.M. and C.G. (collectively the boys), appeals from the juvenile court's dispositional order. (Welf. & Inst. Code, §§ 360, subd. (d), 395.)¹ Her sole contention on appeal is that the juvenile court abused its discretion when it reduced her visitation from weekly to twice a month. We affirm the juvenile court's order.

FACTUAL AND PROCEDURAL HISTORIES

On July 10, 2009,² the Stanislaus County Community Services Agency (Agency) received a referral that then eight-year-old C.M. had called law enforcement to report a domestic violence incident he witnessed between mother and G., the father of then six-month-old C.G. C.M. told a social worker he saw G. grab his mother by the jaw and neck; she had blood on her nose and he was afraid.

This was not the first incident of domestic violence that C.M. witnessed. In the early evening of June 26, G., who had been drinking beer all day, came into the bedroom where mother and C.G. were, and accused mother of abusing their son. G. shoved mother in the face, knocked her on the bed, jumped on top of her, and began choking her. Mother cried out for C.M. to call for emergency help. C.M. briefly entered the bedroom and saw G. standing over mother, slapping her, and pushing her into the headboard. Police responded to a request for assistance. C.M. told the officer G. would not let him take C.G. from the room. G. was arrested. C.M. also saw G. kick mother during an argument in December 2007.

Mother had a history of drug and alcohol use. The social worker learned that on July 9, mother drove her vehicle into the family home, reportedly while under the influence. C.G. was in the living room, while C.M. was down the street. Although on July 14 mother denied current drug use, the following day she tested positive for amphetamine and admitted smoking a joint laced with methamphetamine. In an

¹ All further statutory references are to the Welfare and Institutions Code.

² All dates are in 2009 unless otherwise stated.

interview with a social worker, both mother and C.M.'s father, B., stated that use of alcohol and drugs does not affect their parenting.

In June 2007, C.M. told a social worker investigating a referral that he was never alone. He said that when mother was not home, either his grandmother or his 18-year-old brother watched him, and his grandmother watched him over the weekends. C.M. also said mother drank alcohol. The social worker met with mother, who smelled strongly of alcohol. Mother admitted drinking two 32-ounce beers per day and using marijuana daily, but claimed she did not use in C.M.'s presence. B. told the social worker that he and mother had used drugs together in the past, including crystal methamphetamine, but claimed they did not use drugs when C.M. was present. As a result of the investigation, mother was offered voluntary services. While mother stated she was open to services, she refused to cooperate, rarely returned the Agency's telephone calls, continued to use alcohol, and communicated she did not believe she needed services. Because there was not a signed case plan, the case eventually was closed.

Both of the boys had prenatal substance exposure. In March 2000, during her pregnancy with C.M., mother tested positive for benzodiazepine, marijuana, cocaine and opiates at a 12-week checkup. When C.M. was born in October 2000, both mother and child had negative toxicology results, although medical personnel reported that mother produced more than one dirty test result during the pregnancy. Mother tested positive for opiates when C.G. was born in January 2009, although she claimed to have a prescription for Vicodin.

Both fathers had histories of domestic violence. G. admitted having a prior criminal history, which included a 1980 conviction for voluntary manslaughter, and domestic violence arrests in 1992, 1993, and 2001. G. told a social worker he was innocent of the domestic violence charges for which he currently was incarcerated and blamed mother and C.M. for his arrest two weeks earlier, claiming they conspired against him. G. said he knew of mother's alcohol consumption, but did not believe this

hampered her parenting; he had no concern as to her care of their son. Police arrested B. in October 2001 after he threw a full bottle of milk and hit one-year-old C.M. on the forehead, causing a contusion. In February 1998, one of mother's older children, a then nine-year-old boy, witnessed B. hitting mother, and when the boy jumped on B.'s back to stop the assault, B. hit him. B. has domestic violence arrests in December 1992 and June 2009.

Mother had mental health concerns, although reports varied as to the exact nature of her diagnosis. G. told a social worker that mother had been at the Behavioral Health Center four times in June. On April 17, a local hospital made a referral, stating that mother visited the hospital's emergency room twice that day, she was bipolar, and the hospital had to put her in restraints because she was yelling at and hitting herself. When C.G. was born, mother told a hospital social worker that while she was not experiencing any symptoms of depression, she had depression in the past. At a March 2000 prenatal visit during her pregnancy with C.M., mother reported discontinuing her psychiatric medications. Mother told a social worker on June 12, 2007, that she had multiple personality disorder, she self-medicated with marijuana, and she had not taken her mental health medications for years. Mother's eldest child, an adult daughter, reported that when mother is under the influence of alcohol or drugs she functions at a lower level than when she is sober. The daughter reported mother as being bipolar, which runs in the family, and stated she had never heard of the other diagnoses.

On July 20, the Agency held a team decision meeting (TDM) and offered Families in Partnership (FIP) services designed to help the family address the issues of domestic violence and substance abuse, as well as mother's mental health. The parents voluntarily placed the boys with relatives while they worked on their case plan. At the TDM, B. told a social worker he would be incarcerated soon due to assault charges stemming from an incident between himself and his current significant other, and admitted domestic

violence during his relationship with mother. Mother reported daily use of alcohol and drugs and B. reported daily consumption of alcohol.

Despite being warned that they needed to comply with FIP services or the case would be sent to court, mother and B. did not comply. They failed to attend weekly check-in group sessions; on August 3, mother refused to go with a driver who came to pick her up, claiming to be sick, and on August 10, she was not at home when the driver came by. B. smelled strongly of alcohol on the morning of his substance abuse assessment, which he failed to complete. The house mother was living in, which belonged to the boys' maternal grandmother, was reverting to the bank in the next few weeks. Mother told a social worker she was concerned about what would happen to her three dogs when she lost the house and the dogs were the only thing keeping her from residential drug treatment.

During the time of voluntary services, mother visited the boys on a weekly basis. On August 4, the relative caregiver reported that C.M. was in need of mental health counseling, he struggled with enuresis and she suspected molestation by either one of mother's boyfriends or possibly an older brother. The caregiver agreed to take the boys for a visit with mother and B. the following day, and reported that during visits, C.M. goes outside to play with a friend that lives next door. During an August 18 visit, the social worker noted that mother seemed most comfortable interacting with C.G.; she seemed less comfortable trying to think of things to say or do with C.M. C.M. told the social worker he liked living with his relatives, though he would like to see his sister more. The social worker spoke with the daughter, who stated that domestic violence had been present in mother's intimate relationships in the past, mother never disciplined her children, and the daughter would not allow her own children to have unsupervised visits with mother because of her lack of protective capacity over herself and the boys. According to the daughter, she had both boys in her home in the afternoons and on

weekends. The daughter reported she did the bulk of the child rearing for both boys and they were in her home most of their waking hours.

The boys were placed in protective custody on August 14 after mother signed a waiver. On August 18, the Agency filed a petition alleging that (1) the boys had suffered, or there was a substantial risk they would suffer, serious physical harm or illness as a result of the failure to supervise or protect them from the conduct of the custodian with whom they had been left, and parents' inability to provide regular care for them due to mental illness or substance abuse (§ 300, subd. (b)), and (2) the boys were left without any provision for support because both G. and B. were, or would be, incarcerated (§ 300, subd. (g)). The boys were detained and a guardian ad litem appointed for mother.

In an August 25 interview, mother told the social worker that her mental health was fine until her pregnancy with C.M., when she began having some thinking problems. She had been hospitalized a few times since then, but could not remember her last diagnosis. Mother said she last used methamphetamine one and a half weeks ago, she drank alcohol that day, and she had a large beer the day before. When discussing the case plan components and being reunited with the boys, mother said she would need "something to balance me out." Mother visited the boys that day.

On August 31, mother told a social worker that this year had been stressful for her, as (1) she gave birth to C.G. on January 28; (2) her mother died on February 17; (3) as a result of her mother's death, she lost her job as her mother's in-home health worker; (4) foreclosure proceedings had begun; and (5) on August 17 she was given notice that she would be evicted. Her electricity had been turned off. The social worker noticed alcohol on her breath; mother admitted having a large beer that day. The boys were moved to a foster home that day after the Agency learned the relative caregiver's husband had been arrested for being drunk in public.

On September 2, mother admitted having a drinking problem. She also reported she had consistently used methamphetamine for years, including the previous night, and

had attempted treatment once in ten years, but never followed through. Mother said the boys' removal and the loss of her home were "wake up" calls and she needed to quit.

The social worker's report prepared for the jurisdiction/disposition hearing stated that mother had faithfully attended weekly visits with the boys at the Agency. Often she was accompanied by her adult daughter and on the September 1 visit, C.M.'s paternal grandmother came. The social worker stated that all present appeared to enjoy each others' company. A clinician gave the boys developmental and emotional assessments; she concluded the boys were not in need of services. Mother completed a mental health assessment on September 10. The social worker had inquired about a referral to a co-occurring residential treatment plan, if that was determined to be the most appropriate. The social worker recommended that reunification services be provided to mother and B., but denied as to G. The social worker further recommended mother be given a minimum of twice per month visits with the boys while in placement.

At the September 29 combined jurisdiction/disposition hearing, the parties agreed to amend the petition to include a statement: "On September 25th, the mother entered Stanislaus Recovery Center into the COT program." Mother submitted the petition on the basis of the social workers' report. Mother's attorney made no argument with respect to jurisdiction, but requested a change in the case plan to a minimum of weekly visitation. Mother's attorney argued that (1) mother had been consistent in her visits, (2) cooperative with the Agency, (3) was able to get herself into the appropriate treatment program at SRC to assist her in her drug treatment and mental health concerns, and (4) given C.G.'s age, it was very important for her to have as much contact with the boys as possible, which would be the continuation of the weekly visits combined with her ability to have visitation at the Agency "given the transportation issue[s] that have arisen."

The social worker responded that in the first 30 days of treatment, mother was "on blackout." The court stated she could still have visits. The social worker agreed, but explained that visits were only allowed on weekends, and since the social workers who

would be transporting her to the Agency do not work the weekends and were running into problems, as they were down a driver due to a medical leave and another driver's car had broken down, it would be a challenge to transport mother more than twice a month. The social worker further stated that if mother could come to the Agency after the first 30 days, it would "probably be a little easier" to have weekly visits.

Mother's attorney responded that she did not think that was a legal basis to decrease parental visitation, and frequent visitation in the best interest of the children was the important issue. Mother's attorney further stated that although the Agency may be down a driver, that did not absolve it from providing visitation to a parent who is in treatment and that would be most beneficial. The court responded: "That's true. And the Agency can just give her a bus pass. They don't have to give her a driver to accomplish visitation." The social worker stated that during the first 30 days, programs don't allow clients to be on their own. The court stated the issue was whether the Agency was offering and providing visitation, "not that they are twisting themselves around to accommodate the parent's schedule. [¶] So, what I'm saying, Ms. [social worker], is that if I were — if I were to order weekly visits, and if mother's schedule could not accommodate those visits, at least the Agency has made that available."

The boys' attorney weighed in on the issue. He had a problem with the visitation order as laid out to the extent the Agency had the burden of making the boys available to mother; he didn't think it was visitation if a bus pass was given to someone who couldn't use it. The court responded that it had no evidence the children can only be taken to the facility on weekends, and if, for example, the court were to order Wednesday visits and the treatment facility did not abide by that order, the court could join the treatment facility into the case and make them abide by the order. The boys' attorney stated he wanted to make sure they weren't blocking themselves "into a hole." The court disagreed that anyone was being "blocked into a hole," noting that mother had waited six weeks after removal to get herself into a program. The social worker responded on

mother's behalf that there were no openings available into this specific program, which they wanted mother to get into, and other programs had waiting lists. Mother's guardian ad litem added that the "effort was made early on."

The court then sustained the petition after finding the facts contained therein true. The court further found the boys to be persons described by section 300, subdivision (b), and C.G. described by section 300, subdivision (g). The court struck the section 300, subdivision (g) allegation as to C.M., since B. was no longer incarcerated. The court adjudged the boys dependents and found by clear and convincing evidence there would be a substantial risk of danger if the boys were in the custody of either parent, as shown by the parents' substance abuse issues, G.'s current incarceration, and mother's mental health concerns that render her unable to provide proper care and control. The court further found mother had made minimal progress towards alleviating or mitigating the causes necessitating placement. The court ordered reunification services for mother and B., and denied services to G.

The court approved the case plan attached to the report. The court denied mother's request for greater visitation, "because this is the minimum, and the supervising social worker always has discretion to increase visitation; so as mother gets further along in her program and poses less of a danger to this child, then certainly weekly visits would be appropriate. And I'm anticipating setting this on for a progress review, so if she's doing very well, we can certainly adjust that case plan at the progress review." The court set a progress review for December 2, and a six-month review for March 24, 2010.

DISCUSSION

Mother claims the visitation order was an abuse of discretion because twice monthly visitation is inadequate, as it has the potential to weaken or diminish her relationship with the boys and inhibit her ability to reunify with them or prevent adoption by application of the beneficial parent-child exception set out at section 366.26, subdivision (c)(1)(B)(i). We disagree.

When a child is placed in foster care, the juvenile court must order reunification services to be provided as soon as possible to reunify the family “if appropriate.” (§ 319, subd. (e).) When reunification services are ordered, visitation must be “as frequent as possible, consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A).) The corollary to this is that visitation may be limited if the juvenile court finds it is not in the child’s best interest. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 838-839.) The right to visitation “necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child. In balancing these interests, the court in the exercise of its judicial discretion should determine whether there should be any right to visitation and, if so, the frequency and length of visitation. The court may, of course, impose any other conditions or requirements to further define the right to visitation in light of the particular circumstances of the case before it.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) We review this decision for abuse of discretion. (See *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) An abuse of discretion exists where the court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Arthur C.* (1985) 176 Cal.App.3d 442, 446.)

Here, the court ordered twice monthly visitation. The court noted, however, that the supervising social worker had discretion to increase visitation and stated weekly visits would be appropriate once mother progressed in her program and posed less of a danger to the boys. The court further stated that if mother was doing very well, the case plan could be adjusted at the progress review hearing to be held in a little over two months.

The court did not abuse its discretion. As the court explained, it was concerned about mother’s danger to the boys. This danger was evidenced by mother’s long history of substance abuse, her history of mental health problems, her failure to engage in voluntary services despite the threat of court intervention, and exposing the boys to domestic violence. Mother obviously had serious problems that affected her ability to parent and which placed the boys in danger. For example, mother had placed C.M. in the

position of having to protect her. C.M. apparently was having emotional issues, as evidenced by his enuresis and his relative caregiver's concern about his behavior. Although not severe enough for treatment, the court reasonably could conclude that mother's behavior had a negative effect on C.M. Based on this evidence, the court reasonably could conclude that visits should be limited because it was not in the boys' best interest to have more frequent visitation until mother could begin to benefit from the treatment she was receiving.

Mother claims the visitation order was based on Agency's inability to transport mother to visits. Although this was part of the reason the Agency sought to reduce the amount of visitation mother had been receiving, the juvenile court's comments indicate this was not its concern in setting visitation at twice a month. Instead, the court was concerned about the danger mother posed to the boys.

Mother argues the court abused its discretion "by ordering only half the visitation normally required." Mother acknowledges she has no authority which states that weekly visitation is required during the reunification period. Instead, she argues weekly visitation was required for the boys to sustain their relationship with mother, particularly at this early stage in the case. While the court set visitation at less than once per week, it noted weekly visits would be appropriate once mother got further along in her program and posed less of a danger to the boys. Given mother's history of substance abuse, domestic violence, and mental health problems, we do not see any abuse of discretion with respect to this order, especially in light of the court's reminder that the social worker could increase visitation and its willingness to reevaluate the situation at the progress review hearing. If mother progressed in her plan, presumably the social worker would increase visitation and if the social worker did not do so, the court would. The visitation order did not deny mother a "reasonable opportunity to pursue reunification." (*In re Luke L.* (1996) 44 Cal.App.4th 670, 681.)

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

Gomes, J.

WE CONCUR:

Cornell, Acting P.J.

Kane, J.